IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 323 of 1993

with

CRIMINAL APPEAL No 696 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJULA NARAYAN

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 323 of 1993
MR BS SUPEHIA for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

2. Criminal Misc.ApplicationNo 696 of 1993
MR BS SUPEHIA for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 11/12/2000

ORAL JUDGEMENT

(Per : MISS JUSTICE R.M.DOSHIT)

1. Both these appeals are directed against the judgment and order dated 30th April, 1992 passed by the learned Additional Sessions Judge, Baroda in sessions Case No.138 of 1991.

2. In Sessions Case No.138 of 1991, four persons, namely, (1) Shanabhai Ratansing Vasava (accused No.1), (2) Manjulaben Narayan Vasava (accused No.2), (3) Dilipbhai alias Dalo Ratansing Vasava (accused No.3) and (4) Chhatrasinh Laxman (accused No.4), were tried for offence punishable under Sections 452, 302 and 34, I.P.C. Under the impugned judgment, the learned Additional Sessions Judge has ordered conviction of all the four accused for offence punishable under Section 302 read with Section 34, I.P.C. All the four accused have been sentenced with life imprisonment. However, no separate sentence has been passed for offence punishable under Section 452, I.P.C. Feeling aggrieved, accused No.2-Manjulaben Narayan Vasava has preferred above Criminal Appeal No.323 of 1993 and accused No.3-Dilipbhai alias Dalo Ratansing Vasava has preferred the above Criminal Appeal No.696 of 1993.

3. It was the case of the prosecution that on 13th May, 1990, at around 2.0 o' Clock in the afternoon, when deceased Narayan Navghan Vasava was sleeping in his house at Saiyedpura, the four accused persons, i.e. wife of Narayan Navghan (accused No.2), brothers-in-law of Narayan Navghan (accused Nos.1 and 3) and accused No.4 entered the house of Narayan Navghan and insisted that Narayan Naghan should divorce his wife-Manjula (accused No.2). The deceased-Narayan Navghan refused to give divorce to Manjulaben. Feeling enraged, all the four accused persons caught hold of the deceased-Narayan Navghan, poured kerosene over him and set him ablaze. The deceased-Narayan Navghan tried to escape and ran out of the house, took an auto-rickshaw and went to the hospital. In the hospital, the deceased was treated for first and second degree burn injuries. However, he developed septicaemia and died of septicaemia on 23rd May, 1990. Thereupon, offence punishable under Section 302 read with Section 34 and Section 452, I.P.C. was

registered against the four accused persons and were tried by the learned Additional Sessions Judge, Vadodara.

4. In the hospital, the Executive Magistrate was summoned and the Executive Magistrate recorded the dying declaration of the deceased at around 7.20 in the evening. The Doctor-in-charge certified that the patient was conscious and was in fit state of mind to give dying declaration. The Executive Magistrate also recorded that during the recording of the dying declaration, except the Magistrate, nobody was present. He asked certain formal questions to which the deceased-Narayan Navghan gave proper answers. The deceased-Narayan Navghan stated that he was plying a pedal Rickshaw. That day, in the after noon, when he was sleeping in his house, three persons, his brothers-in-law - Dalabhai Ratansing and Shanabhai Ratansing - and a third person known as Chhatrasing Navghan entered his house, poured kerosene over him and set him ablaze. He escaped therefrom and came to the hospital. The said Chhatrasinh wanted to marry his wife-Manjula and those persons were insisting for divorce to which the deceased refused. His wife-Manjulaben had also accompanied those three persons. His children, a daughter and two sons, had run away from the house. The Executive Magistrate, Mukundray N. Joshi (P.W.2) has deposed that the doctor had certified that the deceased was conscious and was in fit state of mind to give a dying declaration. That he had found the deceased in a fit state of mind to give dying declaration. The deceased did not smell of alcohol and he could give his thumb impression. Dr. Uday Ramchandra Purandare (Ex.9) had performed autopsy on the body of the deceased-Narayan Navghan on 24th May, 1990. He has proved the post-mortem note (Ex.10). He has certified that the deceased had suffered first and second degree burns on the face, chest, neck, both the hands, back, etc. The lower part of the right hand was not burnt. The burns had been suffered before death. He opined that the death occurred on account of "Shock due to septicaemia following burns 1st to 3rd degree 60-70% burns".

5. In his complaint before the police, the deceased-Narayan Navghan had stated that his wife-Manjulaben had deserted him some two months before and had gone to reside with the accused-Chhatrasinh. That all the four accused used to pressurise him for giving divorce to Manjulaben, to which the deceased was not agreeable. On the day of incidence, the two brothers-in-law of the deceased-Narayan Navghan and Chhatrasinh had come to the house of the deceased and picked up a quarrel as to why he did not agree to give

divorce to Manjulaben and abused him. At that time, Manjula was standing outside the house. When the deceased refused to give divorce, both his brothers-in-law caught hold of him and Chhatrasinh took the kerosene tin lying in his house and poured kerosene over him and set him ablaze using a match stick.

5.1 The prosecution has also examined eye-witnesses Savaleram Fulabhai (P.W.3), Rajabhai Ramabhai (P.W.4), Sonalben Narayan, the daughter of the deceased (P.W.5), Jadavben Navghanbhai, the mother of the deceased (P.W.6) and Madhurav Ramchandra (P.W.7), all of whom have turned hostile. However, all the said witnesses were consistent in one thing, i.e. the accused-Manjulaben, the wife of the deceased-Narayan Navghan, had deserted him and started residing with accused-Chhatrasinh and that the accused were insisting for a divorce, to which the deceased-Narayan Navghan did not agree. The Investigating Officer and P.S.I. Shivsinh Mansinh Gohil (P.W.8) has stated that a certificate was obtained from the doctor as regards the patient's condition, i.e. the deceased-Narayan Navghan was conscious and was in fit state of mind to give dying declaration. However, after some 15 to 20 minutes, a team of 3-4 doctors came there and after examining Narayan Navghan, struck off the original endorsement made by the doctor-in-charge and made another endorsement to the effect that the patient was smelling of alcohol, but was responding to verbal commands. He has also stated that a prohibition case was registered against the deceased. That on 23rd May, 1990, the mother of the deceased, i.e. Jadavben, had come to him and informed that the deceased-Narayan had gone to the house without the leave of the hospital authority and had died. He has also stated that the statements of the hostile witnesses were recorded by him and all of them had stated about the quarrel between the accused persons and the deceased and that the deceased was set ablaze by the accused persons.

6. Mr. Supehia has relied upon the evidence of Solanben (P.W.5) and Jadavben (P.W.6). He has submitted that Sonalben has deposed that her father had burnt himself with a view to implicating the accused to take revenge against them. The witness-Jadavben has stated that the deceased had come to her house without the leave of the hospital authorities. He has, therefore, strenuously urged that the deceased-Narayan Navghan had grudge against the accused persons and with a view to vindicating his grudge, he not only committed suicide by burning himself but had falsely implicated the accused and, as stated by Jadavben, he had left the hospital

without proper discharge and had died of septicaemia. No charge against any of the accused has, therefore, been proved. He has also relied upon the certificate given by the doctor. He has stated that the original endorsement "patient is conscious, you can take dying declaration" was later struck off and was replaced by the endorsement "patient is smelling of alcohol and is responding to verbal commands". Thus, at the relevant time, the deceased-Narayan Navghan was under the influence of alcohol and the statement given under the influence of alcohol, i.e. the dying declaration, should not be believed.

7. The Investigating Officer had, under communication dated 13th May, 1990 (Ex.12) summoned the Executive Magistrate at around 7.0 o' clock in the evening for recording the dying declaration of deceased Narayan Navghan. On the said communication, the doctor-in-charge had made the endorsement of the patient being conscious and in fit state of mind to give dying declaration. The said endorsement has been struck off and another statement of the patient smelling of alcohol, as recorded hereinabove, was made. Neither the doctor who had made the earlier endorsement nor the doctor who had made the later endorsement has been examined by the prosecution. The signature under the later endorsement is also not clear. We find this to be highly irregular. Once the doctor-in-charge had made the endorsement, it should not have been struck off and a fresh endorsement should not have been made by some other doctor. Both the endorsements are in different hand, different pen and different ink. In absence of any other corroborating evidence, we shall rely upon the first endorsement made by the doctor-in-charge under his hand. Even otherwise, even under the later endorsement it has been categorically stated that the patient was responding to the verbal commands. That only means that even if the deceased had been drunk, he was in complete control of the self. We, therefore, do not see any reason why the dying declaration given by him should not be believed. The Executive Magistrate (P.W.2) in his evidence has categorically stated that the patient was not smelling of alcohol, nor was he under the influence of alcohol and, at the time of recording of dying declaration, he was conscious and in fit state of mind to give dying declaration. Even the Executive Magistrate had obtained opinion of the doctor in respect of the patient's condition - whether he was conscious and was able to give dying declaration. The Executive Magistrate being an independent witness and he having ascertained the condition of the patient from the doctor, the dying

declaration recorded by him requires to be believed and can safely be relied upon. It must be noted here that the deceased-Narayan Navghan had, in the F.I.R. given to the police (Ex.25) and in the dying declaration given to the Executive Magistrate (Ex.13), implicated accused Nos.1, 3 and 4 alone. Though he had stated that accused No.2-Manjula was present, no overtact has been attributed to Manjula (accused No.2). According to the deceased, it was accused Nos. 1 and 3 who caught hold of him and it was accused No.4 who poured kerosene and alighted him. In our view, considering the evidence on record, the conviction of accused No.2-Manjulaben is wholly unwarranted and cannot be sustained. We are also of the view that the prosecution has proved the guilt of accused No. 3 beyond reasonable doubt and he has been rightly convicted for offence punishable under Section 302 read with Section 34, I.P.C. The conviction of the said accused No. 3 and the sentence passed upon him do not call for interference and are confirmed.

8. In view of the above discussion, Criminal Appeal No.323 of 1993 preferred by accused No.2-Manjulaben Narayan Vasava is allowed. The judgment and order of the learned Trial Judge, as regards the conviction of accused No.2-Manjulaben Narayan Vasava and the sentence passed upon her, is quashed and set aside. Accused No.2-Manjulaben Narayan Vasava is acquitted of the charge framed against her. The bail bond executed by her stands cancelled. The conviction of accused No.3-Dilipbhai alias Dalo Ratansing Vasava and the sentence passed upon him are confirmed. Criminal Appeal No.696 of 1993 preferred by accused No.3-Dilip alias Dalo Ratansing Vasava is dismissed.

[MS. R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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